

COMMISSIONERS
MIKE GLEASON - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

OPEN MEETING ITEM
ORIGINAL



0000084273

ARIZONA CORPORATION COMMISSION

22

DATE: APRIL 22, 2008

DOCKET NO: WS-20543A-07-0435

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Yvette B. Kinsey. The recommendation has been filed in the form of an Opinion and Order on:

DOUBLE DIAMOND UTILITIES, INC.
(CC&N)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

MAY 1, 2008

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

MAY 6, 2008 AND MAY 7, 2008

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.



BRIAN C. McNEIL
EXECUTIVE DIRECTOR

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Arizona Corporation Commission
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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 MIKE GLEASON - Chairman
4 WILLIAM A. MUNDELL
5 JEFF HATCH-MILLER
6 KRISTIN K. MAYES
7 GARY PIERCE

8 IN THE MATTER OF THE APPLICATION OF
9 DOUBLE DIAMOND UTILITIES, INC. FOR A
10 CERTIFICATE OF CONVENIENCE AND
11 NECESSITY TO PROVIDE WATER SERVICE
12 AND WASTEWATER SERVICE IN MOHAVE
13 COUNTY.

DOCKET NO. WS-20543A-07-0435

DECISION NO. _____

14 **OPINION AND ORDER**

15 DATE OF HEARING: December 3, 2007

16 PLACE OF HEARING: Phoenix, Arizona

17 ADMINISTRATIVE LAW JUDGE: Yvette B. Kinsey

18 APPEARANCES: Mr. Michael W. Patten, Roshka, DeWulf & Patten,
19 P.L.C., on behalf of Double Diamond Utilities, Inc.; and

20 Ms. Kenya Collins, Staff Attorney, Legal Division, on
21 behalf of the Utilities Division of the Arizona
22 Corporation Commission.

23 **BY THE COMMISSION:**

24 On July 23, 2007, Double Diamond Utilities, Inc. ("DDU", "Double Diamond" or
25 "Applicant") filed with the Arizona Corporation Commission ("Commission") an application for a
26 Certificate of Convenience and Necessity ("Certificate" or "CC&N") to provide water and
27 wastewater services for a master planned community known as The Ranch at White Hills in Mohave
28 County, Arizona.

On August 20, 2007, the Commission's Utilities Division ("Staff") filed an Insufficiency
Letter in this docket.

On August 27, 2007, Applicant filed its Response to Staff's Insufficiency Letter.

On September 6, 2007, Staff filed a Sufficiency Letter in this docket indicating DDU's
application had met the sufficiency requirements as outlined in the Arizona Administrative Code
("A.A.C.").

1 On September 11, 2007, by Procedural Order, the matter was set for hearing and Staff was
2 directed to file its Staff Report in this matter on or before October 2, 2007.

3 On September 18, 2007, Staff filed a Motion to Extend Deadline to prepare the Staff Report
4 in this matter. Staff requested an extension of its deadline to file its Staff Report until November 2,
5 2007 and requested that the other procedural deadlines established in this matter be reset.

6 On September 20, 2007, Applicant filed a Response to Staff's Motion to Extend Deadline
7 stating Applicant did not object to Staff's request for an extension of time until November 2, 2007.

8 On October 1, 2007, by Procedural Order Staff's Motion was granted, the hearing in this
9 matter was reset to be held on December 3, 2007 and the timeclock was extended accordingly.

10 On October 23, 2007, DDU docketed a Notice of Publication.

11 On November 2, 2007, Staff filed its Staff Report recommending approval of the application
12 with conditions.

13 On November 16, 2007, DDU filed Comments to the Staff Report.

14 On November 30, 2007 Staff filed its Reply to DDU's Comments to the Staff Report.

15 On December 3, 2007, a full public hearing was held before a duly authorized Administrative
16 Law Judge of the Commission at its offices in Phoenix, Arizona. DDU and Staff appeared through
17 counsel and presented evidence and testimony. No members of the public appeared to give public
18 comment. At the conclusion of the hearing, the parties were instructed to file late-filed exhibits
19 related to the testimony given at the hearing.

20 On December 6, 2007, a Procedural Order was issued governing the timeframes for the filing
21 of late-filed exhibits and the timeclock in this matter was extended accordingly.

22 On the same date, Staff filed a late-filed Exhibit in this matter.

23 On December 31, 2007, Applicant filed a Request for Waiver from the requirement that it file
24 documentation concerning liens against its affiliated entities. Applicant stated that there were no
25 liens against DDU and that all but one lien against an affiliated entity had been released and/or
26 discharged. The remaining lien is a mechanic's lien against Milano Residences, LLC ("Milano").

27 On February 22, 2008, by Procedural Order, Applicant's Request for Waiver from the
28 requirement that it file documentation discussing any remaining liens was granted.

1 After the filing of the Procedural Order granting the Applicant waiver from the filing of the
 2 Late-Filed Exhibit the matter was taken under advisement, pending submission of a Recommended
 3 Opinion and Order to the Commission.

4 * * * * *

5 Having considered the entire record herein and being fully advised in the premises, the
 6 Commission finds, concludes, and orders that:

7 **FINDINGS OF FACT**

8 1. Double Diamond is an Arizona C corporation in good standing with the Commission's
 9 Corporations Division. Double Diamond was formed to provide water and wastewater services to all
 10 residences and businesses at The Ranch at White Hills Development ("White Hills").

11 2. The White Hills development will be located approximately 40 miles northwest of
 12 Kingman, in Mohave County, Arizona, and will ultimately encompass approximately 25,167 acres of
 13 privately owned lands.

14 3. Double Diamond is owned by the Mardian family. The Mardian's own various LLCs
 15 or corporations that own land and have assets in Arizona, Nevada, and Canada. (Tr. Pg. 40, lines 1-23)

16 4. On July 23, 2007, Double Diamond filed an application with the Commission
 17 requesting a CC&N to provide water and wastewater for the initial phase of the White Hills
 18 development, a proposed master-planned community in Mohave County, Arizona. The proposed
 19 CC&N area encompasses one square mile or 640 acres and is more fully described in Exhibit A,
 20 attached hereto and incorporated herein by reference.

21 5. Notice of the application and hearing date were given in accordance with the law.

22 6. Staff is recommending approval of Double Diamond's application, subject to the
 23 following conditions:

- 24 1. That DDU obtain no more than 30 percent Advances in Aid of Construction
 25 ("AIAC") and/or Contributions in Aid of Construction ("CIAC") in its capital
 structure by the end of the fifth year of operation.
- 26 2. That DDU's fair value rate base ("FVRB") for property devoted to water
 27 service is \$6,928,816 and for wastewater services \$10,975,072 for setting its
 initial rates.
- 28 3. That Staff's recommended rates and charges as shown in Schedules CSB-W5

1 and CSB-WW5 in the Finance and Regulatory Analysis ("FRA") Report be
2 approved. In addition to collection of its regular rates, DDU may collect from
its customers a proportionate share of any privilege, sales or use tax.

- 3 4. That DDU be required to file with Docket Control, as a compliance item, a
4 tariff consistent with the rates and charges authorized by the Commission
within 30 days of the Decision in this matter.
- 5 5. That DDU file a rate case in its sixth year of operations, using the fifth year as
6 the test year.
- 7 6. That DDU be required to file notification with Docket Control, as a
8 compliance item in this docket, within 15 days of providing service to its first
9 customer.
- 10 7. That DDU be required to maintain its books and records in accordance with the
11 National Association of Regulatory Utility Commission ("NARUC") Uniform
System of Accounts for Water and Wastewater Utilities.
- 12 8. That DDU be required to adopt Staff's water and wastewater depreciation rates
13 and to use these rates by individual NARUC category as delineated in Tables
14 A and C, respectively, of Staff's Engineering Report.
- 15 9. That DDU's charge for minimum deposit be as prescribed in A.A.C. R-14-2-
16 403(B)(7).
- 17 10. That DDU be required to file with Docket Control, as a compliance item in this
18 docket, copies of the water division's Approval to Construct ("ATC") for
19 Phase 1 of the initial phase of The Ranch at White Hills project when received
by the Company, but no later than two years after the effective date of the
order granting the CC&N.
- 20 11. That DDU file with Docket Control, as a compliance item in this docket, a
21 copy of the Arizona Department of Water Resources' ("ADWR") Letter of
22 Adequate Water Supply for each individual subdivision in the requested area,
when received by the Company, but no later than 30 days after issuance by
ADWR.
- 23 12. That DDU file with Docket Control, as a compliance time in this docket,
24 copies of the wastewater division's General Permits for Phase 1 of the initial
25 phase of the wastewater plant for The Ranch at White Hills when received by
26 the Company, but not later than two years after the effective date of the order
granting the application.
- 27 13. That DDU file with Docket Control, as a compliance item in this docket, a
28 copy of the Aquifer Protection Permit ("APP") for the wastewater division
within two years after the effective date of the order granting this application.
14. That Staff's service line and meter installation charges be approved as shown
in Table B of the Engineering Report with separate installation charges for
service line and meter installations.
15. That DDU file with Docket Control, as a compliance item, for review and
approval by the Director of the Utilities Division, a curtailment tariff within 45
days after the effective date of any decision and order pursuant to this

application. The tariff shall generally conform to the sample tariff found posted on the Commission's web site (<http://www.azcc.gov/divisions/utilities/water/forms.asp>) or available upon request from Commission Staff.

16. That DDU file with Docket Control, as a compliance item, for review and approval by the Director of the Utilities Division, a backflow prevention tariff within 45 days of the decision in this matter. The tariff shall generally conform to the sample tariff found posted on the Commission's web site (<http://www.azcc.gov/divisions/utilities/water/forms.asp>) or available upon request from the Commission Staff.
17. That DDU retain a certified operator and file notification of the entity's name and qualifications, as a compliance item in this docket by December 31, 2008.
18. That DDU obtain a performance bond or irrevocable sight draft letter of credit in the amount of \$250,000 by December 31, 2008 and file evidence of such bond or irrevocable letter of credit in Docket Control as a compliance item in this docket.

7. Staff further recommends that the Commission's Decision granting the requested CC&N to DDU be considered null and void should DDU fail to meet Conditions Nos. 10, 11, 12, 13, 15, 16, 17, and 18 listed above within the timeframes specified.

Management Capabilities

8. All of the Arizona Double Diamond entities are family owned by Leonard Mardian (45%), Susan Mardian (45%) and Lori Mardian (10%). (Tr. Pg. 40, lines 1-17)

9. Leonard and Susan Mardian ("Developers") have a combined total of 76 years experience in developing real estate. (Tr. Pg. 39, lines 13-15 and pg. 29, lines 3-5)

10. DDU's application states the Mardians have completed numerous development projects in Nevada, including a Wal-Mart and Sam's Club, two commercial shopping centers, hotels, several self-storage facilities, and apartment complexes. Additionally, the Mardians have overseen the design and construction of off-site and on-site utility lines, extensions and connections relating to these projects. (Application, Pg. 3)

11. Further, DDU's Vice President of Operations has 25 years experience in land development and has specialized in delivering highly complex land development services for utility regulatory compliance, land planning strategies and construction management services for the past ten years. (Application, Pgs. 3-4)

1 **Overview of White Hills**

2 12. The initial phase of White Hills will consist of 1,800 single family units, 700 multi-
3 family units, a school, commercial development and two community parks. (Application, Pg. 4)

4 13. The first homes in the initial phase are anticipated to be completed at the end of 2009.
5 (Tr. Pg. 12, lines 1-4)

6 14. The Mardians anticipate that there will be no customers in the first year and 2,000
7 customers at the end of five years.

8 15. Plans are that the White Hills development will ultimately have 20,500 single family
9 units and 4,500 multi-family units, as well as schools, public facility sites, open space areas and
10 commercial development encompassing 25,000 acres. (Application, Pg. 4) The development will be
11 laid out in a checkerboard fashion with the Bureau of Land Management ("BLM") lands interspersed
12 between each section. (Tr. Pg. 27, lines 24-26)

13 16. The request for service came from Arizona Acreage, LLC, which is one of the limited
14 liability corporations owned by Mardians. (Tr. Pg 41, lines 1-6)

15 17. Mr. Mardian testified that he envisions White Hills becoming the "city of the future in
16 the southwest." (Tr. Pg. 27, lines 17-18) He stated that the property has over two million Joshua trees
17 and described the property as having the most beautiful landscaping anywhere in the desert and that
18 his goal is to try to retain as much of that as possible. (Tr. Pg. 29, lines 19-23)

19 18. Ms. Kathy Tackett-Hicks, Vice President of Operations for DDU, testified that the
20 White Hills project as well as the other Mardian Ranch properties¹ will have an integrated water,
21 wastewater and reclaimed water service infrastructure. (Tr. Pg. 14, lines 18-25)

22 19. DDU's application states the development area is designed so that the community park
23 areas and common landscape areas use minimum water consumption and eventually residents will be
24 able to use reclaimed water from the community wastewater treatment facilities for irrigation and
25 watering purposes. (Application, Pg. 4)

26 20. The application states that as part of the utility infrastructure, reclaimed water mains
27

28 ¹ Ms. Tackett-Hicks testified that the Mardian Ranch property includes more than 25,000 acres. (Tr. Pg. 13, lines 13-25)

1 are planned to extend along segments of the roadway to ensure that reclaimed water will be available
2 for irrigation of parks and common landscaping. (Application, Pg. 5)

3 21. The Applicants maintain that they will be able to craft an environmentally
4 conscientious community that focuses on water conservation and preservation of the natural beauty of
5 the area. (Application, Pg. 4)

6 22. The area plan for the White Hills development has been approved by Mohave County.

7 23. DDU testified that there will be no golf courses located in the initial phase, but there
8 are possibly five or six planned for the entire development, and the plan is to use 100 percent treated
9 effluent for the golf courses' water use. (Tr. Pg. 25, lines 1-6)

10 **Water System**

11 24. Stantec Engineering has been hired to design the backbone water production and
12 distribution facilities, the backbone wastewater collection and treatment facilities, and the reclaimed
13 water mains for the White Hills development. (Application, Pg. 5)

14 25. Stantec is a national engineering and consulting firm that provides professional design
15 and consulting services in planning, engineering, architecture, surveying, economics, and project
16 management, including water and wastewater projects. (Application, Pg. 5)

17 26. For the initial phase of the White Hills water system, DDU proposes to construct five
18 wells, totaling 890 gallons per minute ("GPM"); 1.5 million gallons of storage; booster systems; and
19 approximately 112,000 lineal feet of transmission and distribution mains, at a total projected cost of
20 \$11.26 million.

21 27. DDU submitted its projected total water plant-in-service costs for the first five years.
22 In year one DDU projects costs of \$3,064,890; year two \$4,562,490; year three \$7,177,050; year four
23 \$9,814,770; and year five \$11,255,140. Staff reviewed the projected plant-in-service costs and found
24 them to be reasonable and appropriate. However, Staff did not make a "used and useful"
25 determination of the proposed water plant-in-service costs and no conclusions should be inferred for
26 ratemaking or rate base purposes.

27 28. DDU has not received its Arizona Department of Environmental Quality ("ADEQ")
28

1 ATC for construction of the water facilities.

2 29. On January 23, 2006, the U.S. Environmental Protection Agency reduced the arsenic
3 maximum containment level ("MCL") in drinking water from 50 parts per billion ("ppb") to 10 ppb.

4 30. DDU's water quality test results for the White Hills development show arsenic levels
5 to be 1.6 ppb and within the EPA's arsenic standard.

6 31. The proposed CC&N service area is not located within an Active Management Area
7 ("AMA") and there are no ADWR AMA reporting and conservation requirements.

8 32. Staff reviewed the ADWR's Analysis of Adequate Water Supply Letter dated April
9 11, 2006 which showed that 7,573 acre-feet per year of groundwater and 2,374 acre-feet per year of
10 treated effluent projected at build-out will be physically available for the White Hills development.
11 Staff concluded that the combined 9,947 acre-feet is more than DDU's projected build-out demands
12 for the White Hill development of 7,976 acre-feet per year for approximately 25,000 dwelling units.²

13 33. Staff contacted the United States Geological Survey ("USGS"), Arizona Geological
14 Survey and ADWR to see if any groundwater aquifer studies have been conducted for Mohave
15 County. All three indicated that no studies have been conducted, but that ADWR and USGS have
16 both initiated studies in the northern Mohave County area and the final report from that study is
17 expected to be completed in three years.

18 34. DDU has a Franchise Agreement issued by Mohave County for the proposed service
19 area.

20 **Wastewater System**

21 35. DDU's application states that the initial phase of the White Hills development will be
22 served by a smaller wastewater treatment plant, but ultimately DDU intends to construct a regional
23 wastewater treatment plant to serve the entire development. (Application, Pg. 5)

24 36. DDU's proposed wastewater system will be phased in beginning with a 0.3 million
25 gallon per day ("MGD") and phasing in facilities up to 1.5 MGD by the end of the fifth year.
26 Additionally, the 1.5 MGD wastewater treatment plant and approximately 98,600 lineal feet of
27

28 ² Staff's Report showed a combined total of 10,307 acre-feet; however, the correct number of combined acre feet is 9,947.
(Staff Report, pg. 5)

1 collection system will have a total projected cost of \$17.73 million.

2 37. DDU also proposes to construct a reclaimed water system that will consist of pump
3 station/storage sites and approximately 25,000 lineal feet of force mains at an estimated cost of \$2.6
4 million for irrigational use on roadway landscaping, schools, parks and entrance features.

5 38. DDU submitted its projected total wastewater plant-in-service costs for the first five
6 years. In year one DDU's projects costs of \$5,881,300; year two \$8,076,580; year three \$14,586,260;
7 year four \$16,085,100; and year five \$17,733,940. Staff reviewed the projected plant-in-service costs
8 and found them to be reasonable and appropriate. However, Staff did not make a "used and useful"
9 determination for the proposed wastewater plant-in-service costs and no conclusions should be
10 inferred for ratemaking or rate base purposes.

11 39. DDU has not received its ADEQ General Permit for construction of the wastewater
12 facilities.

13 40. DDU does not have an APP representing authority for the designation of a wastewater
14 service area and a wastewater provider.

15 41. DDU proposes a \$1,500 hook up fee per service lateral for its wastewater division.
16 Staff testified that it is Staff's policy that hook-up fees for initial CC&Ns should not be allowed and
17 Staff is recommending denial.

18 42. Staff concluded that DDU's proposed wastewater system will have adequate
19 infrastructure to serve the requested area.

20 43. DDU has a Franchise Agreement issued by Mohave County for the service area.

21 **Rates and Financial Capability**

22 44. DDU proposes to finance the required water and wastewater facilities using a
23 combination of equity provided by the developers, AIAC and CIAC. (Application, Pg. 7)

24 45. DDU intends to enter into main extension agreements with each of the individual
25 builders for each of the subdivisions within the White Hills development and require the builders to
26 construct the required on-site lines for water and wastewater service and then assign the lines to DDU
27 when construction is complete. (Application, Pg. 7)

28

1 46. For the water division, Staff's recommended rates are based on DDU's water
2 division's five-year projections as adjusted by Staff. Staff's recommended projected revenues of
3 \$1,681,402 would generate an operating income of \$554,305, resulting in an 8.0 percent rate of return
4 on Staff's adjusted original cost rate base ("OCRB") of \$6,928,816.

5 47. For the wastewater division, Staff's recommended rates are based on DDU's
6 wastewater division's five-year projections as adjusted by Staff. Staff's recommended projected
7 revenues of \$2,454,480 would generate an operating income of \$878,006 resulting in an 8.0 percent
8 rate of return on Staff's adjusted OCRB of \$10,975,072.

9 48. DDU's application included five-year projections for plant values, operating revenues,
10 operating expenses and the number of customers to be served.

11 49. According to Staff, projections and assumptions are necessary to establish a fair value
12 rate of return and initial rates due to the lack of historical information.

13 50. Staff concluded that DDU's OCRB is the fair value rate base ("FVRB").

14 51. Staff determined the FVRB for the water plant to be \$6,928,816 at the end of the fifth
15 year and the FVRB for the wastewater plant to be \$10,975,072 for the same period.

16 52. Staff made adjustments to DDU's water division capital structure reducing the percent
17 of AIAC/CIAC to 30 percent of total capital, from the 56 percent AIAC/CIAC proposed by DDU.
18 Staff's adjustments increased DDU's paid-in-capital by \$2,829,198 for a total amount of \$6,974, 237
19 of paid-in-capital at the end of year five, instead of DDU's proposed paid-in-capital amount of
20 \$4,145,039 for the same timeframe.

21 53. Staff also made adjustments to DDU's wastewater division capital structure reducing
22 the percentage of CIAC to 30 percent of total capital from the 52 percent CIAC proposed by DDU.
23 Staff's adjustments increased DDU's paid-in capital by \$3,528,250 for a total amount of \$10,896,065
24 of paid-in capital at the end of year five, instead of DDU's proposed paid-in-capital amount of
25 \$7,367,815 for the same timeframe.

26 54. Staff's reduction in CIAC also increased the rate base for DDU's wastewater division
27 from \$7,503,344 to Staff's recommended \$10,975,072.

28 55. Staff recommended modifying DDU's proposed water rate design by removing the

1 first tier for all meter sizes except the 3/4" (residential) class and increasing the commodity rates in
2 order to generate Staff's recommended revenue.

3 56. Staff also recommended adding a 5/8" x 3/4" meter to DDU's water rate design to
4 provide DDU with the ability to serve customers who may request that meter size and to ensure that
5 DDU recovers its costs associated with designing and building its water system to meet the demands
6 for its largest customer (3/4" residential customer). Therefore, Staff set the rates for the 5/8" x 3/4"
7 meter rate the same as that of the 3/4" meter.

8 57. In its Comments to Staff Report, DDU stated that it generally agreed with Staff's
9 recommendations, but opposed Staff's recommendation regarding the middle tier commodity rate for
10 both 5/8" x 3/4" meters and for 3/4" meters because they cover the narrow range of 4,000 to 6,000
11 gallons. DDU further explained that the narrow range would limit the conservation effect of the
12 inverted block structure, particularly given that the average usage assumption is 7,800 gallons per
13 month. DDU proposed that the range for the 5/8" x 3/4" meters and 3/4" meters be increased to 4,001
14 to 8,000.

15 58. In Staff's late filed exhibit, Staff stated that it had no objections to the tier range
16 changes, but continued to recommend its proposed charge per tier range, which would result in a
17 \$5,528 (or 0.0033 percent) change in DDU's annual revenues.

18 59. DDU did not object to Staff's late-filed exhibit.

19 60. Under DDU's proposed rates a typical water residential customer using an estimated
20 average of 7,800 gallons would pay a rate of \$49.50. Under Staff's recommend rates, the typical
21 water bill would be increased to \$69.82.

22 61. DDU's proposed a flat monthly fee of \$70.00 for its wastewater services. Staff
23 recommended a flat monthly fee of \$97.59 in order to generate Staff's recommended revenue
24 requirement.

25 62. Staff reviewed the developers' personal financial information and an unaudited
26 balance sheet for the period ending June 30, 2007, which showed assets of approximately \$900,000
27 and equity of approximately \$900,000. (Application, Exhibit 10) Based on the above information,
28 the extensive personal holdings and substantial capital gains of the developers, Staff concluded that

1 DDU has adequate income to provide the water and wastewater services in the requested area.

2 63. DDU proposes to contract with outside, unaffiliated third parties to handle the day-to-
3 day utility management and operations including engineering, billing, customer assistance, meter
4 reading, repairs and maintenance, tax administration, legal and accounting. Staff recommends that
5 DDU retain a Certified Operator by December 31, 2008.

6 64. In its Comments to Staff Report, DDU objected to Staff's timeframe for hiring a
7 Certified Operator, but withdrew its objection at hearing. DDU testified that it was withdrawing its
8 objection because it had some discussions with Staff and that DDU was amenable to having to
9 identify an operator two to three months prior to serving its first customer. (Tr. Pg. 12, lines 1-8)
10 Staff did not present any testimony at hearing regarding the two to three month timeframe for DDU
11 to hire a Certified Operator.

12 65. DDU testified that it believes it will serve its first customer by the end of 2009. (Tr.
13 Pg. 12, lines 1-4) No evidence was presented demonstrating that DDU has any experience in running
14 the day-to-day operations of a water or wastewater facility. Therefore, having an entity or Certified
15 Operator with expertise in running the day-to-day operations is an important aspect for DDU to
16 operate a successful utility. Hence, we believe Staff's recommendation should be modified to require
17 DDU to have identified and retained a Certified Operator and file notification of that entity's name
18 and qualifications as a compliance item at least six months before it serves its first customer or by
19 June 30, 2009, whichever comes first.

20 **Other Issues**

21 66. On August 22, 2006, affiliated entities of DDU known as Gateway Lots, LLC and
22 Flannery & Allen, LLC entered into a Consent Decree with the Arizona Department of Real Estate
23 ("Department"). The Consent Decree resolved issues related to the entities selling lots in five
24 subdivisions in Mohave County between May 2002 and June 2005, for failing to notify the
25 Department of its intent to offer or sell lots, and for failing to provide a public report for the lots sold.

26 67. In rendering its decision, the Department stated there were several mitigating factors
27 which included:
28

- a. Respondents promptly self reported the non-compliance as soon as it was discovered;
- b. no complaints regarding the sold lots had been filed with the Department prior to the Consent Decree;
- c. Respondents cooperated in producing copies of the deeds, related documents and information related to the acquisitions, sales and/or transfers of the lots;
- d. Respondents voluntarily suspended lot sales pending resolution of the matter;
- e. Prior to the Consent Decree, Gateway Lots, LLC diligently worked in cooperation with the Department to complete and file an application for a subdivision public report for lots located in its tract; and
- f. Flannery & Allen, LLC filed an application for a subdivision public report for its lots.

68. As a result of the violations, the DDU affiliated entities were ordered to cease and desist the sale of any properties, assessed a civil penalty of \$45,000, required to contribute \$30,000 to the Department's Education Fund, and required to offer to rescind the contracts for the lots to any of the purchasers.

69. Mrs. Mardian testified that that when the lots were originally purchased there were a couple of thousand previously subdivided lots and there were other owners in the area selling subdivided lots and they [the affiliated entities] didn't realize that they needed a public report to sell the lots. (Tr. Pg. 45, lines 22-25, pg. 46, lines 1-13) She also testified that this was the first time that she had dealt with subdivided paper lots and that in Nevada a public report was not required to sell lots. (Tr. Pg. 47, lines 1-7)

70. Mrs. Mardian further testified that the lots were sold between 2003 and 2006, and the cost of the lots ranged between \$5,000 and \$75,000. (Tr. Pg. 48, lines 1-15)

71. As a part of its application, DDU provided documentation showing that all penalty amounts had been paid in full.

72. Staff contacted the Department and there have been no further violations against DDU or its affiliated entities since the Consent Decree.

73. In reviewing DDU's application, Staff located an article published by the Las Vegas Sun on September 22, 2006, which questioned financial links between former Clark County Commissioner Lynette Boggs-McDonald and Mrs. Mardian. The article stated that in October 2004

1 Mrs. Mardian wanted to build a 144-room full-service Holiday Inn on five acres that she owned, but
2 the land was zoned for single-family residences. The article stated that less than six months after
3 helping Mrs. Mardian to obtain the zoning change, the Commissioner acquired 4.7 acres of land from
4 Mrs. Mardian in the town of White Hills, Arizona. According to the article, the sale price for the 4.7
5 acres was \$125,000, and Mrs. Mardian loaned the Commissioner \$100,000 towards the purchase
6 price. Also, according to the article, the Commissioner never disclosed the loan on her financial
7 disclosure forms in violation of Nevada state law and never disclosed her indebtedness to Mrs.
8 Mardian when she voted on a liquor and gaming issue involving a tavern owned by Mrs. Mardian.

9 74. The article also stated that over a two-year period Mrs. Mardian contributed a total of
10 \$11,500 to the Boggs-McDonald campaign.

11 75. Mrs. Mardian testified that in May 2005, the company sold a five-acre parcel of land
12 to Boggs-McDonald for \$125,000 and she was given a \$25,000 credit from the purchase price for
13 installation of roads and power, as was every other purchaser of the lots. She further testified that the
14 Boggs-McDonald lot was one of 50 lots sold during that time and each purchaser was given a seller
15 carryback financing on their property. (Tr. Pg. 42, lines 1-19)

16 76. Mrs. Mardian also testified that her relationship with Boggs-McDonald was strictly as
17 any other businessperson with a Commissioner. (Tr. Pg. 43 13-25) She further testified that about
18 two-and-a-half years ago, Boggs-McDonald attended a function at her home and that she had a social
19 lunch with the Commissioner with a group of people, but that neither event was related to the Boggs-
20 McDonald campaign. (Tr. Pg. 44, lines 9-19)

21 77. Mrs. Mardian testified that she believed the Commissioner was charged with several
22 felonies for paying a nanny with campaign funds and for living outside her district, but that she was
23 not charged with anything to do with not reporting the Arizona land transaction. (Tr. Pg. 45, lines 3-9)

24 78. Staff did not locate any past or pending litigation against either Leonard or Susan
25 Mardian associated with the actions raised in the newspaper article.

26 79. In reviewing DDU's application, Staff discovered that DDU had three Government
27 liens, one tax lien from the State of Arizona and two liens from the Internal Revenue Service ("IRS").
28 Staff reported that the IRS liens and the State of Arizona tax lien had been satisfied. However, Staff

1 stated that there was one outstanding lien against one of DDU's affiliates that had not been
2 discharged and/or released.

3 80. During the hearing, DDU testified that it believed there was one lien that had not been
4 resolved and/or discharged regarding one of its affiliates. (Tr. Pg. 41, lines 7-14) On December 6,
5 2007, by Procedural Order, DDU was directed to file as a late filed exhibit documentation showing
6 that any remaining liens had been discharged and/or released. On December 31, 2007, DDU filed a
7 request for waiver from the requirement to file the documentation stating that "all but one lien against
8 affiliated entities have been released and/or discharged." DDU explained that the remaining lien was
9 a mechanic's lien related to a 100-unit condominium project in Nevada and that a jury trial was
10 scheduled for February 4, 2008, and therefore the lien would not be released and/or discharged by
11 December 31, 2007, and the issue could be litigated for some time. (Request, Pg. 2) Further, DDU
12 asserted that the pending mechanic's lien against an affiliate is not reflective on the financial ability
13 of DDU to provide utility service.

14 81. On February 22, 2008, by Procedural Order, DDU's request for waiver was granted
15 because DDU complied with the request as far as liens against DDU, and DDU provided sufficient
16 information as to liens against its affiliates.

17 **Performance Bond**

18 82. Because DDU has no prior experience in operating a public utility, Staff is
19 recommending that DDU procure a performance bond or irrevocable sight draft letter of credit in the
20 amount of \$250,000.

21 83. DDU did not oppose Staff's recommendation for a performance bond in the amount of
22 \$250,000.

23 84. Staff's recommendation that DDU procure a performance bond or irrevocable sight
24 draft letter of credit is consistent with prior Commission decisions.

25 85. We find that although the developers of the White Hills development have extensive
26 experience in developing real estate in Arizona and Nevada, they have no prior experience in
27 successfully operating a public utility. In a fact scenario similar to DDU, in Commission Decision
28

1 No. 69256 (January 19, 2007), the Commission required Green Acres Water LLC and Green Acres
 2 Sewer LLC to **each** procure a performance bond or irrevocable sight draft letter of credit in the
 3 amount of \$250,000 because it found that neither had experience in successfully operating a public
 4 utility and the performance bond or irrevocable sight draft letter of credit would serve to ensure the
 5 that the applicants would be able to continue operations for a reasonable period without a related
 6 entity's financial support, if necessary.³ In this matter, DDU did not file separate applications for its
 7 water and wastewater CC&Ns; however, the need to protect the public is just as great as if the
 8 application had been filed as a request for two separate CC&Ns. Therefore, we believe the
 9 requirement that DDU file a performance bond or irrevocable sight draft letter of credit in the amount
 10 of \$250,000, should be modified to require DDU to file a performance bond in the amount of
 11 \$250,000 for its water system and \$250,000 for its wastewater system, for a total amount of
 12 \$500,000. We believe the additional requirement is in the public interest as well as consistent with
 13 prior Commission decisions.⁴

14 86. DDU is in compliance with paying its property taxes.

15 87. Staff recommendations as modified herein, are reasonable and should be adopted.

16 88. Because an allowance for property tax expense will be included in DDU's rates and
 17 will be collected from its customers, the Commission seeks assurances from DDU that any taxes
 18 collected from ratepayers have been remitted to the appropriate taxing authority. It has come to the
 19 Commission's attention that a number of water and wastewater companies have been unwilling or
 20 unable to fulfill their obligation to pay the taxes that were collected from ratepayers, some for as
 21 many as twenty years. It is reasonable, therefore, that as a preventive measure DDU shall annually
 22 file, as part of its annual report, an affidavit with the Utilities Division attesting that the Company is
 23 current in paying its property taxes in Arizona.

24 89. In recent months, the Commission has become increasingly concerned about the
 25 prolonged drought in Arizona. Therefore, we believe DDU should be required to conserve
 26 groundwater and that DDU should be prohibited from selling groundwater for the purpose of
 27 _____

28 ³ Commission Decision No. 69256 (January 19, 2007) Finding of Fact No. 48.

⁴ Woodruff Water and Wastewater (Docket Nos. W-04264A-04-0438 et al.), Decision No. 68453 (February 2, 2006).

1 irrigating any future golf courses within the certificated area or any ornamental lakes or water
2 features located in the common areas of the proposed new developments within the certificated area.

3
4 **CONCLUSIONS OF LAW**

5 1. Upon beginning operations, Applicant will be a public service corporation within the
6 meaning of Article XV of the Arizona Constitution and A.R.S. §§40-281 and 40-282.

7 2. The Commission has jurisdiction over the Applicant and the subject matter of the
8 application.

9 3. Notice of the application and the hearing thereon was given in accordance with the
10 law.

11 4. There is a public need and necessity for water and wastewater utility services in the
12 proposed Certificated area.

13 5. Applicant is a fit and proper entity to receive a CC&N to provide water and
14 wastewater utility services in the proposed Certificated area.

15 6. Staff's recommendations as modified herein are reasonable and should be adopted.

16 7. The rates and charges authorized herein are just and reasonable.

17 8. DDU should post a performance bond or irrevocable sight draft letter of credit in the
18 amount of \$500,000 by December 31, 2008.

19 **ORDER**

20 IT IS THEREFORE ORDERED that Double Diamond Utilities, Inc.'s application for a
21 Certificate of Convenience and Necessity to provide water and wastewater service to the area
22 described herein as Exhibit A, is hereby granted subject to the following Ordering paragraphs.

23 IT IS FURTHER ORDERED that Double Diamond Utilities, Inc. shall file a rate case in its
24 sixth year of operations, using the fifth year as the test year.

25 IT IS FURTHER ORDERED that Double Diamond Utilities, Inc., shall file with Docket
26 control, as a compliance item in this docket, a tariff consistent with the rates and charges authorized
27 herein within 30 days of the effective date of this Decision.

28 IT IS FURTHER ORDERED that Double Diamond Utilities, Inc., shall file with Docket

1 Control, as a compliance item in this docket, notification to the Commission within 15 days of
2 providing service to its first customer.

3 IT IS FURTHER ORDERED that Double Diamond Utilities, Inc., shall file with Docket
4 Control, as a compliance item in this docket, copies of the water division's Approval to Construct for
5 Phase 1 of the initial phase of the Ranch at White Hills project when received by the Company, but
6 not later than two years after the effective date of this Decision.

7 IT IS FURTHER ORDERED that Double Diamond Utilities, Inc., shall file with Docket
8 Control, as a compliance item in this docket, a copy of the Arizona Department of Water Resources'
9 Letter of Adequate Water Supply for each individual subdivision in the Certificated area, when
10 received by the Company, but no later than 30 days after issuance by the Arizona Department of
11 Water Resources.

12 IT IS FURTHER ORDERED that Double Diamond Utilities, Inc., shall file with Docket
13 Control, as a compliance item in this docket, copies of the wastewater division's General Permits for
14 Phase 1 of the initial phase of the wastewater plant for the Ranch at White Hills when received by the
15 Company, but not later than two years after the effective date of this Decision.

16 IT IS FURTHER ORDERED that Double Diamond Utilities, Inc., shall file with Docket
17 Control, as a compliance item in this docket, a copy of the Aquifer Protection Permit for the
18 wastewater division within two years of the effective date of this Decision.

19 IT IS FURTHER ORDERED that Double Diamond Utilities, Inc., shall file with Docket
20 Control, as a compliance item, for review and approval by the Director of the Utilities Division, a
21 curtailment tariff within 45 days of the effective date of this Decision. The tariff shall generally
22 conform to the sample tariff found posted on the Commission's website
23 (<http://www.azcc.gov/divisions/utilities/water/forms.asp>) or available upon request from Commission
24 Staff.

25 IT IS FURTHER ORDERED that Double Diamond Utilities, Inc., shall file with Docket
26 Control, as a compliance item, for review and approval by the Director of the Utilities Division, a
27 backflow prevention tariff within 45 days of the effective date of this Decision. The tariff shall
28 generally conform to the sample tariff found posted on the Commission's website

1 (<http://www.azcc.gov/divisions/utilities/water/forms.asp>) or available upon request from Commission
2 Staff.

3 IT IS FURTHER ORDERED that Double Diamond Utilities, Inc., shall retain a Certified
4 Operator and file notification of the entity's name and qualifications, as a compliance item at least six
5 months before it serves its first customer or by June 30, 2009, whichever comes first.

6 IT IS FURTHER ORDERED that Double Diamond Utilities, Inc. shall obtain Staff's
7 recommended capital structure of approximately 70 percent equity, and 30 percent advances in aid of
8 construction and/or contributions in aid of construction by the end of its fifth year of operations.

9 IT IS FURTHER ORDERED that Double Diamond Utilities, Inc. shall procure a performance
10 bond or irrevocable sight draft letter of credit in the amount of \$500,000 by December 31, 2008.

11 IT IS FURTHER ORDERED that Double Diamond Utilities, Inc., shall file the original
12 performance bond or irrevocable sight draft letter of credit with the Commission's Business Office
13 and copies of the performance bond or irrevocable sight draft letter of Credit with Docket Control, as
14 a compliance item in this docket, by December 31, 2008.

15 IT IS FURTHER ORDERED that Double Diamond Utilities, Inc.'s performance bond or
16 irrevocable sight draft letter of credit shall remain in effect until further Order of the Commission.
17 The Commission may draw on the performance bond or irrevocable sight draft letter of credit, on
18 behalf of, and for the sole benefit of Double Diamond, Inc.'s customers, if the Commission finds, in
19 its discretion, that Double Diamond, Inc. is in default of its obligations arising from its Certificate.
20 The Commission may use the performance bond or irrevocable sight draft letter of credit funds, as
21 appropriate, to protect Double Diamond's customers and the public interest and take any and all
22 actions the Commission deems necessary, in its discretion, including, but not limited to appointing an
23 interim operator. The performance bonds or irrevocable sight draft letter of credit shall be maintained
24 and copies of the same filed annually on the anniversary date of the initial filing until further Order of
25 the Commission or ten years have passed, whichever is sooner, at which time the bonding or letter of
26 credit requirement may be terminated upon Double Diamond Utilities, Inc's application for the same.

27 IT IS FURTHER ORDERED that if Double Diamond Utilities, Inc. fails to comply with the
28 timeframes in the above Ordering Paragraphs, the Certificate of Convenience and Necessity granted

1 herein shall be considered null and void after due process.

2 IT IS FURTHER ORDERED that Double Diamond Utilities, Inc.'s, fair value rate base for
3 property devoted to its water service is \$6,928,816 and for wastewater services \$10,975,072 for
4 setting its initial rates.

5 IT IS FURTHER ORDERED that Double Diamond Utilities, Inc., shall adopt Staff's water
6 and wastewater depreciation rates and use these rates by individual National Association of
7 Regulatory Utility Commission category as delineated in Tables A and C, respectively, of Staff's
8 Engineering Report.

9 IT IS FURTHER ORDERED that Double Diamond Utilities, Inc. shall maintain its books and
10 records in accordance with the National Association of Regulatory Utility Commission Uniform
11 Systems of Accounts for Water and Wastewater Utilities.

12 IT IS FURTHER ORDERED that Double Diamond Utilities, Inc. shall charge the following
13 water rates as set forth below:

14 MONTHLY USAGE CHARGE:

15	5/8" x 3/4" Meter	\$32.00
	3/4" Meter	\$32.00
16	1" Meter	\$54.00
	1-1/2" Meter	\$107.00
17	2" Meter	\$171.00
	3" Meter	\$320.00
18	4" Meter	\$534.00
19	6" Meter	\$1,037.00

20 COMMODITY CHARGES – PER 1,000 GALLONS OF USAGE:

21	5/8" x 4/5" Meter	
	0 to 4,000 gallons	\$4.23
22	4,001 to 8,000 gallons	\$5.50
	8,001 and above gallons	\$6.50
23	3/4" Meter	
	0 to 4,000 gallons	\$4.23
24	4,001 to 8,000 gallons	\$5.50
	8,001 and above gallons	\$6.50
25	1" Meter	
26	0 to 4,000 gallons	\$4.23
	4,001 to 10,000 gallons	\$5.50
27	10,001 and above gallons	\$6.50
	1-1/2" Meter	
28	0 to 45,000 gallons	\$5.50

1	45,001 and above gallons	\$6.50		
2	2" Meter			
3	0 to 45,000 gallons	\$5.50		
4	45,001 and above gallons	\$6.50		
5	3" Meter			
6	0 to 130,000 gallons	\$5.50		
7	130,001 and above gallons	\$6.50		
8	4" Meter			
9	0 to 200,000 gallons	\$5.50		
10	200,001 and above gallons	\$6.50		
11	6" Meter			
12	0 to 300,000 gallons	\$5.50		
13	300,001 and above gallons	\$6.50		
14	CONSTRUCTION WATER, PER 1,000 GALLONS:	\$6.50		
15	SERVICE LINE AND			
16	<u>METER INSTALLATION CHARGES:</u>	<u>Services</u>	<u>Meters</u>	<u>Total</u>
17	(Refundable pursuant to A.A.C. R14-2-405)			
18	5/8" x 3/4" Meter	\$355.00	\$85.00	\$440.00
19	3/4" Meter	355.00	165.00	520.00
20	1" Meter	405.00	205.00	610.00
21	1-1/2" Meter	440.00	415.00	855.00
22	2" Meter (Turbine)	600.00	915.00	1,515.00
23	2" Meter (Compound)	600.00	1,640.00	2,240.00
24	3" Meter (Turbine)	775.00	1,420.00	2,195.00
25	3" Meter (Compound)	815.00	2,215.00	3,030.00
26	4" Meter (Turbine)	1,110.00	2,250.00	3,360.00
27	4" Meter (Compound)	1,170.00	3,145.00	4,315.00
28	6" Meter (Turbine)	1,670.00	4,445.00	6,115.00
29	6" Meter (Compound)	1,710.00	6,180.00	7,890.00
30	<u>SERVICE CHARGE:</u>			
31	Establishment	\$ 30.00(1)		
32	Establishment (After Hours)	\$60.00		
33	Re-establishment of Service (within 12 months)	(2)		
34	Reconnection (Delinquent)	\$60.00		
35	Meter Test (If Correct)	\$50.00		
36	Meter Re-Read (If Correct)	\$30.00		
37	Customer Deposit	(3)		
38	Deposit Interest	6.00%		
39	NSF Check Charge	\$35.00		
40	Late Payment Penalty (Per Month)	1.50%		
41	Deferred Payment (Per Month)	1.50%		
42	Main Extensions/Meter Relocation	Cost (4)		
43	Service Calls – Not Company Responsibility	Cost (4)		
44	Revenue Taxes & Assessments	(5)		

- (1) Establishment of Service Charge is a combined charge for water and wastewater service and not duplicative.
- (2) Per Rule R14-2-403(D) – Months off system times monthly minimum.
- (3) Per Rule R14-2-403(B)
- (4) Cost is direct materials, direct labor, and overhead burden of 35% of direct labor.
- (5) Per Rule R14-2-403(D)

IT IS FURTHER ORDERED that Double Diamond Utilities, Inc. shall charge the following wastewater rates as set forth below:

Residential Service – Per Month \$97.59

Effluent Sales¹ – Per 1,000 Gallons \$3.00

¹Not applicable to turf irrigation on medians and other common areas

SERVICE CHARGE:

Establishment	\$30.00(1)
Establishment (After Hours)	\$60.00
Re-establishment of Service (within 12 Months)	(2)
Reconnection (Delinquent)	\$60.00
Customer Deposit	(3)
Deposit Interest	6.00%
NSF Check Charge	\$35.00
Late Payment Penalty (Per Month)	1.50%
Deferred Payment (Per Month)	1.50%
Main Extensions/Meter Relocation	Cost (4)
Service Calls – Not Company Responsibility	Cost (4)
Revenue Taxes & Assessment	(5)

- (1) Establishment of Service Charge is a combined charge for water and wastewater service and not duplicative.
- (2) Per Rule R14-2-603(D) – Months off system times monthly minimum.
- (3) Per Rule R14-2-603(B)
- (4) Cost is direct materials, direct labor, and overhead burden of 35% of direct labor.
- (5) Per Rule R14-2-608(D)

IT IS FURTHER ORDERED that Double Diamond Utilities, Inc., shall in addition to the collection of its regular rates, may collect from its customers a proportionate share of any privilege, sales or use tax.

IT IS FURTHER ORDERED that in light of the on-going drought conditions in Arizona and the need to conserve groundwater, Double Diamond Utilities, Inc., is prohibited from selling groundwater for the purpose of irrigating any future golf courses within the certificated area or any

1 ornamental lakes or water features located in the common areas of the proposed new developments
2 within the Certificated area.

3 IT IS FURTHER ORDERED that Double Diamond Utilities, Inc., shall annually file as part
4 of its annual report, an affidavit with the Utilities Division attesting that it is current on paying its
5 property taxes in Arizona.

6 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
8
9

10 CHAIRMAN _____ COMMISSIONER _____

11

12 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER _____

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IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
Director of the Arizona Corporation Commission, have
hereunto set my hand and caused the official seal of the
Commission to be affixed at the Capitol, in the City of Phoenix,
this ____ day of _____, 2008.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

YBK:db

1 SERVICE LIST FOR: DOUBLE DIAMOND UTILITIES, INC.

2 DOCKET NO.: WS-20543A-07-0435

3

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10 1200 West Washington Street
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10 Ernest G. Johnson, Director
11 Utilities Division
12 ARIZONA CORPORATION COMMISSION
13 1200 West Washington Street
14 Phoenix, AZ 85007

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EXHIBIT "A"

Legal Description

T28N, R19W, Section 31

Mohave County, Arizona